

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Kenneth M. Mitan

Debtor.

Case No. 03-71601-R

Chapter 7

Charles J. Taunt, Trustee

Plaintiff,

Adv. Proc. 05-5239

v.

Frank Mitan, et al.,

Defendants.

Opinion Regarding Defendants' Motion to Dismiss

On May 20, 2005, Charles J. Taunt filed a complaint against Frank Mitan and 32 other defendants. The complaint asserts that the defendants received preferential and fraudulent transfers related to Kenneth Mitan's bankruptcy case.

On June 20, 2005, Frank Mitan and other defendants filed a motion to dismiss the case. On June 23, 2005, the motion was denied because plural relief motions are no longer accepted by the Court.

On July 5, 2005, Frank Mitan and other defendants filed a renewed motion to dismiss, asserting that the complaint fails to state a cause of action.

The court must construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove a set of facts in support of its claims that would entitle it to relief. *Mayer v. Mylod*, 988 F.2d 635, 637-38 (6th Cir. 1993). A court may not grant a Rule 12(b)(6) motion based

on disbelief of a complaint's factual allegations. *Lawler v. Marshall*, 898 F.2d 1196,1199 (6th Cir. 1990). . . . The standard of review require[s] more than the bare assertion of legal conclusions.” See *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995).

Bovee v. Coopers & Lybrand C.P.A., 272 F.3d 356, 360-61 (6th Cir. 2001).

The trustee’s complaint in this case states only bare assertions of legal conclusions. It does not identify any specific transfer alleged to be fraudulent or preferential. In the absence of any allegations relating to any specific transfers, it is certainly impossible for the defendants to defend against the trustee’s claims. Accordingly, the complaint must be dismissed.

The Court will enter an appropriate order.

_____/s/_____
Steven Rhodes
Chief Bankruptcy Judge

Entered: September 1, 2005

c: Charles Taunt
Keith Mitan

Not For Publication